

Testimony of David S. Pearl II

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Subcommittee on Commerce, Trade, and Consumer Protection

On behalf of the National Association of Manufacturers

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2123 Rayburn House Office Building

Product Counterfeiting: How Fakes Are Undermining U.S. Jobs, Innovation, and
Consumer Safety

Mr. Chairman, Members of the Subcommittee:

My name is David Pearl II. I am the Executive Vice President of Uniweld Products, Inc., a small family-owned manufacturing company located in Ft. Lauderdale, Florida. I am pleased to appear before the subcommittee today, and to be testifying on behalf of the National Association of Manufacturers. Uniweld was founded by my father, David S. Pearl Sr. in 1949. Starting with 20 employees he expanded the business to as many as 375. Currently, we employ over 260 people who are producing many industrial products, including refrigeration testing and charging manifolds, that is, testing instruments used by refrigeration technicians to determine the condition of an air conditioning or refrigeration system.

The National Association of Manufacturers (the NAM), on whose behalf I am testifying today, is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. The NAM also represents over 350 vertical industry associations and state manufacturing associations and their members. The NAM's mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase understanding among policymakers, the media and the general public about the vital role of manufacturing to America's economic future and living standards.

In 1976, I went to the Middle East to establish Uniweld's products in the market place. Our good American reputation made selling this market possible and profitable. Persistence and diligence in selling our testing and charging manifolds resulted in the gradual build up of our business and we found ourselves a market leader for this product in the Middle East.

Currently, however, Uniweld Products, Inc. has lost over \$1 million a year in testing and charging manifold sales in the Middle East due to the Chinese counterfeits in the Saudi Arabian market. The cheap imitation manifolds look like ours. The instructions sheets we provide with our product are copied with our name, address and telephone numbers, and the packaging even carries the American flag that we put on our own box. The product and the packaging are copied to a "T." I have brought two pairs of samples with me of genuine and fake products.

We have registered our trademark in six countries in the Middle East and 17 other countries elsewhere around the world. Having a product's trademark being registered is supposed to offer some protection from infringement. Not only has this not worked, but the counterfeiting was discovered to have expanded to the United Arab Emirates (UAE) by our sales manager during a trip in November 2004. Two appendices to my statement provide further particulars.

Not only are we losing business, but also the quality of the counterfeit product is so poor that our hard-earned reputation for producing a quality product is being destroyed in one of the most promising market places in the world.

Traders hold the ultimate responsibility as they find the manufacturers to make the product and travel the world to sell without scruples. Traders collect commissions on what is sold and are extremely hard to track down. The actual Chinese manufacturers may not even know anything about our company as they appear to be manufacturing to the traders' specifications.

Something must be done to stop China from counterfeiting trademarked American goods. Customs authorities in all countries must be alert to any goods that fraudulently state "Made in U.S.A." yet have other countries of origin, such as China. When these goods are found the importer should be sanctioned and arrested if possible and the goods confiscated and destroyed. The real manufacturer along with the trader involved should be located and the entire counterfeit ring could then be eliminated. Counterfeiting should be treated as a serious crime everywhere.

It's impossible for a small company like mine address problems like these halfway around the world. The U.S. Government needs to intervene and assist small businesses trying to protect themselves from piracy and counterfeiting. Intellectual property rights (IPR) must be protected. Small businesses do not have the financial resources or the wherewithal to fight global counterfeiting. Our government, through its embassies, can make a real difference in how the governments of other countries view these issues. Embassies should have an IPR advocate who does not just tell the small business to get a local lawyer and go through the foreign countries legal system, but he should have responsibility of assisting that small business in defending its good name, its market share and its employment base.

We have a choice. We can stick our heads in the sand and hope that counterfeiters in China or elsewhere go away, or we can intelligently use our national resources to stop the counterfeiting. If American industry is to be preserved and Americans employed, we need your help and we need it now. Here are immediate action steps that as a representative of a small business I believe we should take:

First, customs authorities need to look for phony “Made in the U.S.A.” attributions on imported products that do not come from the United States. This is a tip-off for which goods are counterfeit. Counterfeiters are getting better and better at mimicking genuine packaging, and “Made in the U.S.A.” is a key part of this mimicry. Such vigilance needs to be a part of accepted best practices by customs services around the world. U.S. Customs and Border Protection should urge greater vigilance through the World Customs Organization.

Second, trade agreements being negotiated should pick up on this point as well. It’s very pertinent that the Office of the U.S. Trade Representative is negotiating a free trade area agreement with the UAE right now. If customs officials in the UAE – or elsewhere, for that matter – do not have the authority or guidance to seize goods solely on the basis of fraudulent “Made in the U.S.A.” printing, then we should ensure that they do.

Third, the U.S. Government as a whole, and U.S. embassies in particular, must find a way to be more helpful to small and mid-size companies that encounter flagrant counterfeiting and IPR violations. We appreciate the establishment of a point of contact for small and mid-size companies in the Patent and Trademark Office but we also need more on-the-ground support overseas.

Fourth, the U.S. Government needs to keep the pressure on foreign governments, like the Chinese government, to enforce their IPR laws and stop the flagrant counterfeiting of U.S. products by their companies. The annual Special 301 list is one tool. It would be helpful to have a link for each country on the annual Special 301 list put out by USTR so that we could better track IPR problems. Today, you can find links to only three of the almost 40 countries. Getting like-minded trading partners, like Europe and Japan, to cooperate and send the same message to these governments would also help.

You need to understand that small businesses like ours operate on relatively small margins. It is a major financial commitment to develop a market overseas. To lose a market because of counterfeiting is a difficult loss to incur. We don’t have the resources to challenge counterfeiters in countries around the world.

The STOP initiative is a good start to developing a global strategy on counterfeiting. But small businesses can’t afford to wait long. We needed to see practical progress soon.

We appreciate the Committee's interest in these concerns and ask that Congress provide the resources and support needed for U.S. agencies to carry out the STOP initiative and move ahead further in the areas that I have noted.

This concludes my statement, Mr. Chairman, and I look forward to your questions.

APPENDIX A

UNIWELD PRODUCTS, INC. CHRONOLOGICAL HISTORY OF COUNTERFEITING

In the late 1990s, Uniweld noticed counterfeit refrigeration testing and charging manifolds (with hoses) showing up in the market place in Saudi Arabia. Our Mid-East Sales Manager scoured the shops and was able to purchase counterfeit Uniweld manifolds. These manifolds were packaged almost exactly like the original. This included Uniweld's name, part number, address, and instruction sheets with Uniweld's name, address and phone number and of course the American flag.

After several years of investigation, we were able to determine that a former customer of Uniweld had taken our product to China for counterfeit duplication. This very same customer owes us several hundred thousand dollars and has been using every trick in the book to delay his final day in court. The judge in the case has said, in open court, that he does not like liars and the defendant will answer for his crimes. We have been in litigation with our current lawyer for more than 2 years. During the previous 2 years we had several other attorneys that were ineffective. The wheels of justice in Saudi Arabia move very, very slowly. The judge has indicated that there are two issues:

1. Payment for the product acknowledged and received
2. Counterfeiting violations, including Trademark Infringement (Uniweld has numerous trademarks registered in Saudi Arabia).

As of May 5, 2005, the legal case is moving forward. The Saudi Chamber of Commerce, Ministry of Trade (Department of Counterfeiting and Trademark Infringement) and the Saudi National Commercial Bank were involved to establish a solid basis for this case. Our Middle East Sales Manager has contacted officials at the United States Embassy in Riyadh to inform the embassy of the situation. We asked for United States Government assistance at the time; the only response we received at the time was to get a lawyer, which we did. We had hoped, though, that the United States Government could intervene through diplomatic channels to assist us.

APPENDIX B**COUNTERFEITING IN THE UNITED ARAB EMIRATES**

In November, 2004, Uniweld participated in The Big Five Show (an annual five-country trade fair) in the United Arab Emirates in Dubai. At this show, our Sales Manager noticed numerous Uniweld counterfeit manifolds. Potential customers and our distributors approached him to let him know that Uniweld products (manifolds) were being sold in shops in large quantities at a cheaper rate (50% cheaper than prices sold to distributors). He proceeded to investigate the claim by visiting the local markets and discovered that what we were told was true. Counterfeit Chinese manufactured manifolds with Uniweld's name, packaging, design, trademarks and even the American flag were being sold in large quantities in Dubai.

There were three major distributors selling counterfeit Uniweld manifolds. Our sales manager immediately contacted Uniweld's Trademark attorneys in Dubai, United Arab Emirates. We presented our lawyer with counterfeit manifolds (with receipts) that were purchased in the three shops. Our lawyer advised us to take action as per local procedures. This we have done. Step one was to send the three offenders a cease and desist letter. As of today, May 5, 2005, two have responded that they did not import the counterfeit manifolds. They claim they are buying them from our authorized Uniweld distributors in Dubai, which they are not. Our attorney has advised us to wait a few weeks before we send agents to determine if they are still carrying and selling counterfeit Uniweld manifolds. One of the offenders has not yet responded to our legal letter. We are waiting a little while longer for his response before we send him an additional letter.

If any of the offenders are found selling counterfeit Uniweld manifolds, a police raid, which includes confiscation of counterfeit goods and closing of the shop, will be instituted immediately without warning.

Our salesman is willing to meet with any U.S. Government official willing and able to help. We hope someone in our government is willing to stand up and put pressure on the U.A.E. Government to stop counterfeiting. We will help all we can.